

In The Matter Of:

IN RE: REFCO, INC. SECURITIES LITIGATION

RAPHAEL THOMAS WALLANDER - Vol. 1 30(B)(6)

November 8, 2011

***(PAGE 214 Designated Confidential Pursuant to
Protective Order)***

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re REFCO, INC. SECURITIES
LITIGATION 07-MD-1902
(JSR)

-----x
MARC S. KIRSCHNER, as Trustee of the
Refco Private Actions Trust,

Plaintiff,

-against- Case No. 07-CV-8165
(JSR)

PHILLIP R. BENNET, et al.,

Defendants.

-----x
GRANT THORNTON LLP,

Defendant/Third-Party Plaintiff,

-against-

THOMAS H. LEE PARTNERS, L.P., et al.,

Third-party Defendants.

-----x
(Page 214 Designated Confidential Pursuant to
Protective Order)

November 8, 2011
9:39 a.m.

Videotaped 30(b) (6) deposition of
WAYSATA INVESTMENT PARTNERS LLC, by RAPHAEL
THOMAS WALLANDER, at the offices of Winston &
Strawn LLP, 200 Park Avenue, New York, New
York, before MARK RICHMAN, a Certified
Shorthand Reporter, Registered Professional
Reporter and Notary Public within and for the
State of New York.

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<p style="text-align: right;">Page 22</p> <p>1 RAPHAEL THOMAS WALLANDER 2 years. What was your start date with 3 Rider Bennett? 4 A. I started as a summer 5 associate in I want to say May of 1998. 6 I started as a lawyer roughly call it 7 September 1 of 2000 -- or of 1999 and 8 that date may be, you know, it may be a 9 little off but roughly that time period. 10 Q. And you make that distinction 11 because prior to that you hadn't finished 12 law school and been admitted to the bar? 13 A. Yes. I studied for the bar 14 exam. And technically, I guess if we 15 really want to get technical, my bar 16 admission was October of 1999 and I don't 17 think the designation of representing 18 one's self as an attorney happens until 19 you get your bar admission. But I went 20 back to work as an associate in the fall 21 of 1999. 22 Q. That's a very fairly short 23 partnership track then? 24 A. It was. 25 Q. Was that accelerated at all or</p>	<p style="text-align: right;">Page 24</p> <p>1 RAPHAEL THOMAS WALLANDER 2 with the banking, some of the banking 3 lawyers. I also -- there wasn't really a 4 department for it but an offshoot of my 5 practice was that I did a fair amount of 6 franchise and distribution work that kind 7 of came naturally with some creditor work 8 that I did. 9 Q. So would you consider yourself 10 during your tenure at Rider Bennett to 11 have done both litigation work and 12 corporate work? 13 A. I was kind of a mutt. 14 Nominally the bankruptcy group was in the 15 litigation department, but it was never a 16 perfect fit and, and invariably 17 bankruptcy is inherently transactional at 18 times. 19 Q. So you stayed with Rider 20 Bennett a little less than a decade, from 21 roughly May of '98 to some portion of 22 2007; is that correct? 23 A. No. Until Feb 1 of 2006 and 24 then I left and I went to a small firm 25 for about a year.</p>
<p style="text-align: right;">Page 23</p> <p>1 RAPHAEL THOMAS WALLANDER 2 was that the standard time frame at your 3 firm? 4 A. You know, yes and no is the 5 answer. The partnership track changed 6 while I was there. And I, I don't know 7 that I was terribly special and I don't 8 know that I was necessarily the reason 9 for some of the changes, but I put myself 10 at average. 11 Q. How large was that law firm, 12 sir? 13 A. At one point in time, it was 14 about 160 lawyers. When I left, I would 15 put it at about a hundred lawyers, and 16 these are approximations. 17 Q. Did it have offices outside 18 Minnesota? 19 A. No. 20 Q. So just Minnesota? 21 A. Just Minneapolis. 22 Q. What department did you work 23 in at Rider Bennett? 24 A. I was in the, the bankruptcy 25 group. I also did a fair amount of work</p>	<p style="text-align: right;">Page 25</p> <p>1 RAPHAEL THOMAS WALLANDER 2 Q. Oh, and then you joined 3 Waysata? 4 A. Waysata. 5 Q. In '07? 6 A. Yes. 7 Q. Got it. 8 A. And the name of that firm, 9 I'll answer your next question, is 10 Morhman, M-O-H-R-M-A-N and Kaardal, 11 K-A-A-R-D-A-L, and that I had the same 12 practice and the same clients at that 13 firm. It didn't really change at all. 14 Q. And if you could give me a 15 little bit more of an understanding as to 16 what precipitated you leaving Rider 17 Bennett and joining Morhman? 18 A. Sure. Firm was in financial 19 trouble. I kind of saw the full books 20 for the first time when I made partner. 21 And, you know, I'm a restructuring 22 lawyer, I kind of have some ability to 23 see what direction the train was going in 24 and I thought it was going steadily in 25 the wrong direction, and just got</p>

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<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 Adams, the former general counsel fairly</p> <p>3 closely on a lot of things and she, I</p> <p>4 believe, worked with him to some extent</p> <p>5 on this. And I frankly just wanted to</p> <p>6 pick her brain to kind of see if she</p> <p>7 remembered anything maybe anybody else</p> <p>8 maybe didn't to try to get, to get the</p> <p>9 institutional memory to the greatest</p> <p>10 extent I could.</p> <p>11 Q. Do you know whose email</p> <p>12 accounts, if any, were searched at</p> <p>13 Waysata in connection with the Wayland</p> <p>14 funds document production?</p> <p>15 A. Email accounts searched?</p> <p>16 Q. Yes.</p> <p>17 A. We, we produced documents that</p> <p>18 we had. We didn't go back to '04 and</p> <p>19 '05. I don't know that we actually still</p> <p>20 have the capability of searching back</p> <p>21 that far.</p> <p>22 Q. So when you say you produced</p> <p>23 documents, where were these documents</p> <p>24 located?</p> <p>25 A. Our operations staff had</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 files were searched and produced to the</p> <p>3 PAT for production in this case?</p> <p>4 A. I, I don't. All I know is</p> <p>5 that we produced some documents that I</p> <p>6 thought were responsive to that. And</p> <p>7 I'll say that this wasn't a document</p> <p>8 subpoena that we received so the normal</p> <p>9 protocols for that type of thing, you</p> <p>10 know, we asked people what do you know,</p> <p>11 what do you have. But that's sort of</p> <p>12 subpoena duces tecum type approach was</p> <p>13 not, it's not the same approach for a</p> <p>14 subpoena of this nature.</p> <p>15 Q. Did you personally make any</p> <p>16 physical search for documents or did you</p> <p>17 simply review documents that had been</p> <p>18 provided to you by the operations team at</p> <p>19 Waysata?</p> <p>20 A. I reviewed things of the</p> <p>21 operations team. I didn't have -- I</p> <p>22 wasn't at the firm, so I reviewed what</p> <p>23 was given to me.</p> <p>24 Q. And who provided you with</p> <p>25 those documents, sir?</p>
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<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 copies of them. I, I can't tell you</p> <p>3 exactly physically within the building</p> <p>4 where they were, but somebody had folders</p> <p>5 and things of that nature.</p> <p>6 Q. So these were all hard copies?</p> <p>7 A. I don't know if we had any</p> <p>8 scanned in. I know that I -- ultimately</p> <p>9 there were PDF's made of them. I suspect</p> <p>10 that somebody might have had some stored</p> <p>11 electronically but I don't know.</p> <p>12 Q. Is that how you ultimately saw</p> <p>13 the documents, only in PDF forms?</p> <p>14 A. No, I had printed copies. I'm</p> <p>15 old fashioned. I sat down and read them.</p> <p>16 Q. But somebody sent you PDF's</p> <p>17 and then you printed them out and read</p> <p>18 through them?</p> <p>19 A. No, I think somebody actually</p> <p>20 handed me copies of them and I said let's</p> <p>21 make PDF's and let's get them on to, to</p> <p>22 Sascha.</p> <p>23 Q. As you sit here today, Mr.</p> <p>24 Wallander, do you know for a fact whether</p> <p>25 or not any email accounts or electronic</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 A. The people I listed, Sue</p> <p>3 Peterson, Tracey Calderon, Linda Gans,</p> <p>4 it's a group effort, Mary. You know,</p> <p>5 there's no, no magic to it. I can't tell</p> <p>6 you each specific document, who actually</p> <p>7 had it, but we came up with the best we</p> <p>8 could for something that's six years old.</p> <p>9 (Deposition Exhibit 3181,</p> <p>10 previously marked and shown to</p> <p>11 witness.)</p> <p>12 Q. Okay. Sir, let me show you</p> <p>13 what's been marked at a previous</p> <p>14 deposition as exhibit 3181. Have you</p> <p>15 seen this before, sir?</p> <p>16 A. This looks like one of the</p> <p>17 notices that we've referenced.</p> <p>18 Q. So you believe exhibit 3181 is</p> <p>19 one of the document notices that you</p> <p>20 believe you became aware of in the last</p> <p>21 one or two weeks; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. So you believe that Waysata</p> <p>24 had received this very document from the</p> <p>25 Private Actions Trust?</p>

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<p>1 RAPHAEL THOMAS WALLANDER 2 ultimately recovered by the PAT and 3 disbursed to FX customers, Waysata or the 4 Wayland funds are not going to be a 5 recipient, an ultimate recipient of any 6 of that recovery, correct? 7 A. Correct. 8 Q. Could you turn to the next 9 page in exhibit 3181 please. On the back 10 side there's a list of nine types of 11 documents that the Wayland funds were 12 requested to produce in this case. Do 13 you see those nine bullet points? 14 A. Correct. I see them. 15 Q. Could you please take a moment 16 to read this list to yourself and let me 17 know when you're finished. 18 A. Okay. 19 Q. Sir, do you believe as you sit 20 here today that the Wayland funds have 21 produced all responsive documents in 22 their possession, custody and control 23 from these nine categories? 24 A. Again, noting that some of 25 these funds no longer exist and we can't</p>	<p>1 RAPHAEL THOMAS WALLANDER 2 worth noting. 3 When Wayland was inside, when 4 Waysata before it became Waysata was 5 inside Cargill, many of these accounts as 6 I understand it, as has been told to me 7 by our operations staff, were set up with 8 CIS, the sort of proprietary currency 9 trading operation at Cargill. 10 Those accounts were sold to 11 Refco. So when these accounts were 12 actually set up, the counterparty to the 13 agreement would have been a Cargill 14 entity, and at the time Wayland was a 15 counter -- was a Cargill entity itself, 16 and generally doing diligence on another 17 entity within your own organization is 18 not customary. So I'm not shocked that 19 we don't have anything like that. And 20 it's a little bit of an odd-ball for an 21 account to get transferred like this, 22 that's the one thing I would note. 23 But I did ask and nobody had 24 anything of that nature. 25 Q. And we will get into all those</p>
<p style="text-align: center;">Page 99</p> <p>1 RAPHAEL THOMAS WALLANDER 2 really produce on behalf of them even, 3 you know, just ticking through the list, 4 the customer agreements, the customer 5 statements, I asked about these entities 6 and we kind of gave what we have, or 7 about these documents, we gave what we 8 could find on them. 9 Q. I want to ask you in 10 particular about number 5, the fifth 11 bullet point. That asks for the 12 production of "Audit materials related to 13 Refco including all documents related to 14 Grant Thornton LLP's audits of Refco or 15 RCM." Do you see that? 16 A. Yes. 17 Q. I haven't seen any documents 18 in this category from the Wayland funds 19 production. Do you know whether the 20 Wayland funds have any documents relating 21 to Grant Thornton's audits of Refco or 22 RCM? 23 A. We didn't see any. That's not 24 to say we didn't have them. There's a 25 little bit of a history to this that is</p>	<p style="text-align: center;">Page 101</p> <p>1 RAPHAEL THOMAS WALLANDER 2 details in a minute. 3 A. Sure. 4 Q. Because I want to discuss that 5 issue with you. 6 A. Sure. 7 Q. I just want to make sure that 8 you didn't have any documents that relate 9 to Grant Thornton's audits of Refco or 10 RCM? 11 A. No, none that anybody was 12 aware of or that we could find. 13 Q. Do -- does Waysata or the 14 Wayland funds have any type of written 15 retention document policy? 16 A. Boy, what is our -- we retain 17 things generally for tax purposes for a 18 fairly long period of time. One other 19 hiccup with this is this is when we were 20 at Cargill so there may very well be 21 documents not in the our possession that 22 would relate to this and if -- and I 23 guess when I think about it the Refco 24 transaction happened afterwards. 25 Yeah, you know we, we have a</p>

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<p>1 RAPHAEL THOMAS WALLANDER 2 accounts with RCM, correct? 3 A. Yes, some of which no -- or 4 entities no longer exist. 5 MR. RAND: I'm going to 6 object, I'm going to object to 7 form. Go ahead. 8 Q. Do you know how many FX 9 trading accounts each of the Wayland 10 funds had with RCM? 11 A. How many specific individual 12 accounts? 13 Q. Right. 14 A. You know, without documents in 15 front of me it's difficult to say. I 16 know that there were I think multiple 17 trades and I don't know if each trade got 18 a different account number or if it was 19 in a different account or not. Without 20 looking at documents it would be tough to 21 say the precise number of accounts. It 22 might be more than 8. But I know that 23 each of these eight funds generally had 24 some type of trading activity and thus an 25 account with.</p>	<p>1 RAPHAEL THOMAS WALLANDER 2 a decision to transfer might be perhaps a 3 mischaracterization is the right word but 4 maybe an overstatement. 5 CIS, and it is okay if I call 6 it the Cargill entity CIS? 7 Q. Sure. 8 A. CIS effectively sold these 9 accounts to Refco and Waysata received 10 notices that this transfer was happening 11 and it was sort of a speak now or forever 12 hold your piece transfer. 13 And I believe it was a 14 relatively short window of time in which 15 to effectuate that transfer. Or I'm 16 sorry, to object to that transfer. 17 Q. Are you aware of any 18 individuals that were involved in the 19 decision as to whether or not to object 20 to that transfer? 21 A. Am I aware of individuals, 22 yes. 23 Q. Who would have been involved 24 in that decision? 25 A. A lot of the same people I've</p>
<p>1 RAPHAEL THOMAS WALLANDER 2 Q. And some of them may have had 3 multiple accounts with RCM? 4 A. I don't know. Without looking 5 at, without looking at documents it's 6 tough to know. I know that these had 7 these trades on. 8 Q. You indicated that prior to 9 transferring their accounts to RCM, all 10 of the Wayland funds had FX trading 11 accounts with CIS Financial Services, 12 correct? 13 A. Yes. 14 Q. That's a subsidiary of 15 Cargill? 16 A. Correct. 17 Q. And then in 2005 all of these 18 accounts were transferred from CIS 19 Financial Services to RCM, right? 20 A. Yes. 21 Q. Do you know who at Waysata or 22 the Wayland funds was involved in the 23 decision to transfer these accounts to 24 RCM? 25 A. I think saying that there was</p>	<p>1 RAPHAEL THOMAS WALLANDER 2 mentioned before, Pat Halloran, Mary 3 Burns, Sue Peterson, Linda Gans, maybe 4 Tracey, probably Steve Adams might have 5 had, I'm assuming would have had some 6 input, though at that point not much. 7 Q. You weren't at the company at 8 the time? 9 A. I was not there. But I did 10 ask the question internally about what 11 happened. And everybody's recollection 12 was that CIS made this transfer and 13 frankly it would have been more work to 14 try to unwind the trades and perhaps 15 uneconomic to do so. 16 Q. Between the time that the 17 Wayland fund accounts opened and the time 18 that they were transferred to RCM, did 19 the Wayland funds use any other 20 counterparties besides CIS for FX 21 trading? 22 A. None that anybody remembered. 23 I, I actually inquired and nobody 24 recalled there being any other 25 counterparty. And the suspicion that</p>

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<p style="text-align: right;">Page 122</p> <p>1 RAPHAEL THOMAS WALLANDER 2 paragraph 3A gives CIS the right and 3 ability to use funds deposited by FX 4 customers as it sees fit?</p> <p>5 A. You're asking me to make a 6 snap decision about what this provision 7 means in the context of a very small font 8 several page agreement. I'm not -- I'm 9 not going to go past saying the language 10 says what it says. I don't think it's 11 appropriate for me to make an 12 interpretation, and I don't think that 13 it's within the scope of what I've been 14 subpoenaed today.</p> <p>15 Q. Do you have any understanding, 16 sir, as somebody who is one of the few 17 in-house lawyers at Waysata, as to 18 whether or not FX trading accounts are 19 typically segregated or nonsegregated?</p> <p>20 A. My guess is after, after 21 Refco, these agreements all got a 22 makeover. I don't, I don't have an 23 opinion on that one way or another.</p> <p>24 Q. So you don't -- 25 A. I think it would probably</p>	<p style="text-align: right;">Page 124</p> <p>1 RAPHAEL THOMAS WALLANDER 2 there is there an I object stated next to 3 it. So they executed these documents and 4 they speak for themselves.</p> <p>5 Q. Are you aware of any 6 discussions that went on at the Wayland 7 funds or at Waysata about whether the 8 funds in their FX trading accounts would 9 be segregated?</p> <p>10 A. I'm not aware of any 11 discussions of that nature.</p> <p>12 Q. Do you recall that being 13 raised as a concern on the part of 14 anybody at Waysata or the, the Wayland 15 funds?</p> <p>16 A. I wasn't there at the time and 17 no one noted to me that this issue was 18 raised prior to the problems that arose 19 with Refco.</p> <p>20 Q. Do you know, sir, exactly when 21 the Wayland funds's FX trading accounts 22 at Cargill were transferred to RCM?</p> <p>23 A. I have a general sense of the 24 time frame that it was roughly August of 25 2005. And if we can turn to the front</p>
<p style="text-align: right;">Page 123</p> <p>1 RAPHAEL THOMAS WALLANDER 2 depend on who the counterparty is. If 3 the counterparty is a JPMorgan or a 4 Credit Suisse or a very, very, very 5 liquid deep investment grade institution, 6 my guess is provisions like this are 7 probably not unheard of, though that may 8 have changed in recent years.</p> <p>9 If the, if the institutions 10 are not investment grade or of shakier 11 credit, I speculate, I don't know, that 12 these provisions would probably be more 13 heavily negotiated in these -- in this 14 current era.</p> <p>15 Q. I take it you don't have any 16 familiarity, though, with that issue?</p> <p>17 A. I haven't, I haven't addressed 18 it before.</p> <p>19 Q. Is it fair to say, sir, that 20 in the 2004-2005 time frame, the Wayland 21 funds did not object to this language in 22 any way?</p> <p>23 A. Well I mean the document 24 speaks for itself. The Wayland funds 25 executed these documents and nowhere in</p>	<p style="text-align: right;">Page 125</p> <p>1 RAPHAEL THOMAS WALLANDER 2 page of this letter, this actually 3 verifies what my colleagues told me was 4 the general time line.</p> <p>5 Q. We're going to look at that 6 letter in a second. But before the 7 account transfer, sir, had the Wayland 8 funds ever had any type of business 9 relationship with RCM?</p> <p>10 A. I believe the answer is no. I 11 think this was, this relationship was 12 fully inherited through this transfer.</p> <p>13 Q. Before the transfer of the 14 Wayland funds FX trading accounts to RCM, 15 had the Wayland funds ever done business 16 with any Refco entity?</p> <p>17 A. I, I garnered information much 18 more narrowly than that for this 19 deposition so it's a supposition for me 20 to give an emphatic no to that, but I 21 believe that is correct. Based on what I 22 have been told, I believe that is the 23 case.</p> <p>24 Q. You're not aware of any 25 relationship between any of the Wayland</p>

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<p>1 RAPHAEL THOMAS WALLANDER 2 recent announcement concerning a 3 provisional agreement to sell the entire 4 global business of Cargill Investor 5 Services to Refco, correct? 6 A. That's what the letter says 7 what it says. I think when you ask me to 8 sort of describe contents of a letter 9 you've just handed to me, I would just 10 referring to the letter itself and say, 11 you know, it says what it says. 12 Q. Okay. The first sentence 13 reads as follows: "Dear Ms. Burns, 14 Further to our recent announcement I 15 wanted to put in writing more detail 16 regarding the provisional agreement to 17 sell the entire global business of 18 Cargill Investor Services to Refco." 19 Correct? 20 A. That's what it says. 21 Q. I've read that correctly? 22 A. That's what it says. 23 Q. Prior to the transfer of the 24 Wayland funds FX trading accounts to RCM, 25 what if any discussions took place</p>	<p>1 RAPHAEL THOMAS WALLANDER 2 Wayland funds required or obligated in 3 any way to transfer their FX trading 4 accounts to RCM? 5 A. No. 6 Q. Could they have chosen to take 7 their business elsewhere? 8 A. They certainly could have. 9 Q. Could you turn back to exhibit 10 3244 please. 11 A. Sure. 12 Q. The very first page of this 13 exhibit is a letter from Steve Assimos of 14 Cargill Financial Services to Susan 15 Peterson of Waysata, correct? 16 A. That's what it is. 17 Q. Dated August 15th, 2005? 18 A. That appears to be the date. 19 Q. And this is the letter that 20 you've been referring to at various 21 points during the deposition as a 22 negative consent letter, right? 23 A. Yep. 24 Q. Do you know who Mr. Assimos 25 is?</p>
<p>1 RAPHAEL THOMAS WALLANDER 2 between Waysata and Cargill about that 3 agreement? 4 A. Nobody remembered anything 5 specific. Just knowing that there's 6 enough folks at Waysata that know folks 7 at Cargill, I wouldn't be shocked if in 8 an informal conversation or even an email 9 there might have been. I haven't seen 10 anything specific. So what I would say 11 is there might have been some 12 communications. It wouldn't be 13 surprising to me. But nobody has 14 enunciated to me anything specific. 15 Q. To your knowledge did any 16 representatives from Cargill make any 17 representations to Waysata about the 18 quality or the level of service that RCM 19 would provide? 20 A. Gosh, I mean this letter sort 21 of purports -- it's more like puffery 22 than an actual firm rep and warrant. But 23 outside of this there's nothing to my 24 knowledge. 25 Q. To your knowledge, were the</p>	<p>1 RAPHAEL THOMAS WALLANDER 2 A. No. 3 Q. You never spoken or 4 communicated with the man? 5 A. No. 6 Q. This letter informs Waysata 7 that unless someone objects, I think you 8 used the word squawks, on behalf of the 9 Wayland funds, the funds' accounts will 10 be transferred to RCM? 11 A. Hence my characterization of 12 it as a negative consent, it's -- it 13 requires you to affirmatively do 14 something in order to take that step. 15 Q. Are you aware of any response 16 that any of the Wayland funds made to 17 this letter? 18 A. Based on my review, and I 19 wasn't around at the time, I don't think 20 we responded. I think we just elected to 21 allow the accounts to get transferred. 22 Q. During this time period, do 23 you know whether Waysata or any of the 24 Wayland funds discussed the possibility 25 of using somebody other than RCM for FX</p>

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